IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 17.8.2006.

National Insurance Company Limited
...Appellant

versus

Smt.Mamtesh @ Mamta and others
... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr. Justice S.D.Anand.

Present: Mr.Deepak Suri, Advocate,
for the appellant.

UMA NATH SINGH, J. (Oral)

Refiling of the appeal is barred by 45 days' delay. However, since the delay has occurred in the office of learned counsel, we deem it expedient, in the interest of justice, to condone the said delay.

This FAO arises out of an award dated 3.2.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Ambala, in MACT Case No.37 of 2004/2005, awarding a sum of Rs.4,39,000/- with 7-1/2% interest per annum in death case of a young barber of 27 years running his hair cutting shop in a village.

Admittedly, the appellant-Insurance Company was not granted any permission under Section 170 of the Motor Vehicles Act, 1988, to contest the case on merit. Learned counsel submitted that the driver of the offending vehicle was not holding a valid driving licence at the time of accident. As per para No.5 of the award, the owner and the driver of the offending vehicle participated in the proceedings before the Tribunal, although they did not file any written statement. That apart, in para No.13 of the award, which is being relied upon by learned counsel for the

appellant, the Tribunal has categorically held that as per the insurance case, the driver of the offending vehicle was not holding a valid driving licence but it is not its case that he was not holding a driving licence at all. Besides, the insurer has not proved to have taken any steps before the Tribunal to ensure production of the driving licence by the said driver. Admittedly, the insurer did not file an application to summon the driver of the offending vehicle to produce his driving licence so as to discharge its onus. That apart, since the deceased was survived by his widow, two unmarried daughters and two unmarried sisters, besides parents said to be wholly dependent upon him, the compensation amount does not appear to be excessive.

Accordingly, the FAO, being devoid of merits, is, hereby, dismissed at the threshold.

(UMA NATH SINGH)
JUDGE

August 17, 2006 **(S.D.ANAND)**
pk **JUDGE**